

Soft drinks do not qualify for the low rate of tax that is applicable to certain food items. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

September 21, 2004

Dear Xxxxx:

This letter is in response to your letter dated June 24, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I represent ABC.

ABC is a direct selling company located in CITY/STATE.

ABC sells its products to Independent Business Owners (distributors) at wholesale. These distributors retail the product to the general public and consume the product personally.

ABC has entered into an agency agreement with the department for the collection of the Retailers' Occupation Tax on sales made in the state by the independent sellers products purchased from the company.

It is the desire of the company to obtain a private letter ruling in regards to its liquid dietary supplement.

Presently the company is collecting and remitting tax at the reduced rate (1.00% plus applicable local taxes). The company believes that this product qualifies as a food product under Section 130.310(b)(1) and therefore is subject to the reduced rate (1.00% plus any applicable taxes).

The company is not currently under audit nor is there pending litigation in a case involving the company or a related taxpayer.

I have enclosed literature and a product label for your review.

I have also enclosed a completed Power of Attorney form (IL-2848).

I request that you review this request and provide us with a written private letter ruling.

DEPARTMENT'S RESPONSE:

Pursuant to our telephone conference of August 30, 2004, we are without sufficient information to make a determination concerning the tax rate of the product you are offering for retail sale.

As stated in your request, please refer to 86 Ill. Adm. Code 130.310, for a determination of whether your product qualifies as a food product subject to the low rate of tax, or whether it constitutes a soft drink subject to the higher tax rate.

As previously requested, without the documentation describing the specific contents, including the percentage volumes thereof, we cannot make this determination in the context of a private letter ruling.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk